



FREQUENTLY ASKED QUESTIONS

About the Governing Laws



FAQs

Should a survivor leave a state with her children to flee from abuse?

It is critical for survivors to speak directly with an attorney in their state who is knowledgeable about domestic violence and interstate issues before leaving the state with children. Survivors also may call the Legal Resource Center on Violence Against Women (301-270-1550) to discuss interstate issues and be connected to attorneys in the relevant jurisdictions. Attorneys and advocates working with survivors in interstate cases also may contact the Legal Resource Center for relocation checklists, sample pleadings, case law, and information.

Can a survivor legally leave a state with her children to flee from abuse?

Maybe. It depends on the state laws and the facts of the case.

There are three main legal issues to consider:

1. The parental kidnapping law in each state says whether it is legal to leave the state with children. In some states, it may be perfectly fine, while in other states, it could be a crime. Some state laws contain exemptions or defenses related to domestic violence or protecting children.
2. If there already is a custody or visitation order in place, a survivor may not violate the terms of the order. If the order gives the abuser certain times to be with the children, the survivor must comply with the order or try to get the order changed or dismissed before leaving the state.
3. There also may be a relocation law in the state that sets forth certain steps to be taken before moving.

An attorney can explain what the state parental kidnapping and state relocation law says.

Because the legal issues are more complicated if a survivor leaves the state, it may be a good idea for a survivor to talk first with a victim advocate and go somewhere safe WITHIN the state (like a shelter or a safe home). Then the survivor will have the time and privacy to talk with an attorney about moving out of state.

What is the relationship between the federal law (Parental Kidnapping Prevention Act) and the state laws (Uniform Child Custody Jurisdiction Act or Uniform Child Custody Jurisdiction and Enforcement Act) – does one trump the others?

As federal law, the Parental Kidnapping Prevention Act (PKPA) applies across the country. As uniform state laws, the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) and its predecessor (the UCCJA, which remains in effect only in Massachusetts) apply only in those states that have enacted them. In general, the principles of federalism establish that federal laws trump inconsistent state laws. However, the relationship between the PKPA and state jurisdictional laws is complex and, arguably, there is no direct conflict between these state and federal laws.

The federal and state laws have different purposes. The UCCJEA determines whether a state has the authority to issue, modify, or enforce a child custody order. In contrast, the PKPA simply is a full faith and credit law for custody orders. It tells courts when to honor and enforce custody orders issued by courts in other states.

In addition, the PKPA references state jurisdictional laws, requiring a custody order to have been issued in compliance with the issuing state's jurisdictional law to be entitled to interstate enforcement. Specifically, the federal law states:

“A child custody or visitation determination made by a court of State is consistent with the provisions of this section only if such court has jurisdiction under the law of such State . . .”
28 U.S.C. 1738A(c)(1).

Therefore, a court must adhere to its own jurisdictional law (the UCCJEA in every state but Massachusetts) for a custody order to be entitled to enforcement under both the federal PKPA and state law.

Is a custody provision within a protection order entitled to full faith and credit?

Custody provisions within protection orders are entitled to full faith and credit across state lines as long as they were issued in compliance with the issuing state's laws. This means that the issuing court should have complied with the following types of laws: (1) the state's substantive law permitting the court to issue a custody order, such as the state's domestic relations statute or protection order statute; (2) the state's child custody jurisdictional law, such as the UCCJEA and (3) the state's personal jurisdiction law (including its long-arm statute.) If the issuing court complied with these state laws, custody provisions within protection orders must be honored and enforced across state lines according to the federal PKPA and the VAWA.

Custody provisions within *ex parte* protection orders are entitled to interstate enforcement, but the analysis is slightly different. The legal authority is provided by VAWA, which requires interstate enforcement of *ex parte* orders if notice and opportunity to be heard will be provided within the time required by the issuing state's law, within a reasonable time after the order is issued, sufficient to protect the respondent's due process rights. The PKPA, and the UCCJEA do not require courts to enforce *ex parte* orders across state lines, so this is the only situation in which the VAWA would need to be used as an independent source of authority for enforcing custody provisions in protection orders.

Should a domestic violence survivor seek a protection order before fleeing across state lines with children?

Maybe. The decision about whether to file for a protection order is a complex one, and an attorney can give advice needed to make a more informed decision. For many domestic violence survivors, a protection order may stop the abuser from using violence, or it may improve the response by law enforcement. In many states, a protection order can help by awarding temporary custody and child support, or by making the abuser leave the home. Getting a protection order also may help prove to a court later that there has been a history of abuse, which may be useful in custody, immigration and relocation cases. Federal and state laws, called full faith and credit laws, require enforcement of protection orders across state lines. Additionally, if the abuser has no connection with the new state, it may be impossible for a survivor to obtain a protection order there.

However, there also may be reasons not to file for a protection order before relocating. If a survivor wants to leave the state, this may be harder to do if there is a protection order that includes visitation for the abuser (because of the need to comply with the visitation schedule in the order). Getting a protection order in the state that a survivor wants to leave also may make things more complicated because it may give that state more of a reason to hold on to a long-term custody case. An attorney can help a survivor understand the pros and cons of filing for a protection order before relocating.

What else should survivors consider before leaving?

There are a number of factors to consider prior to flight across state lines with children. First, a survivor will need to evaluate what will keep her and the children safe. If she believes that the perpetrator will kill her if she does not leave the state, and that no intervention by law enforcement officers, prosecutors, judges, advocates, or community members can prevent this, this expectation must guide her decision-making. Her decision also will be affected by the protections available in each state, such as family support, economic and employment opportunities, the availability of free or affordable legal representation, and the reliability of systemic responses to domestic violence. Next, understanding the laws related to jurisdiction, relocation, and flight across state or tribal lines is a critical part of assisting survivors to make decisions about their safety.

The following legal considerations should be taken into account:

- **What type of parental kidnapping, custodial interference, or child concealment law does the original state have?**

A survivor should understand how state law defines parental kidnapping or related crimes. In some states, as long as there is no court order in effect, either parent is entitled to take the child. In other states, even if there is no custody order in effect, removing the child and depriving the other parent of contact with the child is a criminal offense.

- **Is there any defense or exemption related to domestic violence that could protect the survivor from criminal charges if she flees across state lines with the children?**

There are a variety of state law exemptions or affirmative defenses to parental kidnapping charges. Some state laws specifically include flight from domestic violence as an exemption¹ or as an affirmative defense.² A few laws permit flight but require survivors to meet conditions such as making a report to a district attorney and commencing a custody case within a particular time frame.³ Others permit flight to protect the parent⁴ or the child from imminent harm.⁵ Still others have a general “good cause” defense⁶ or rely on the criminal defense of “necessity.”⁷

Prior to fleeing with children, survivors should know whether they may rely on any exemptions or defenses to protect them in criminal cases. Otherwise, they could end up in jail and lose their children. Of course, survivors are likely to require legal counsel to avail themselves of any available legal protections in court or in negotiations with prosecutors.

¹ See, e.g., FLA. STAT. Ch. 787.03(6)(a)(b)(2002).

² See, e.g., 720 Ill. COMP. STAT. 5/10-5(c)(3)(2001).

³ See, e.g., CAL. PEN. CODE § 278.7(c)(2003).

⁴ See, e.g., IDAHO CODE § 18-4506(2)(b)(2002).

⁵ See, e.g., IDAHO CODE § 18-4506(2)(a)(2002).

⁶ See, e.g., HAW. REV. STAT. § 707-726(2)(2001).

⁷ See, e.g., *Gerlach v. State*, 699 P.2d 358 (Alaska Ct. App. 1985) (defining necessity defense).

- **What type of relocation statute does the state have?**

State civil laws also vary as to whether they permit a parent who has custody of the child to leave the state and under what circumstances.⁸ Depending on the state's relocation law and the usual court rulings in the state, a survivor may need to ask permission from the court prior to relocating. Careful statutory and case law research is necessary to understand the parameters of such laws.

- **Would the survivor be violating a court order by fleeing?**

Courts expect parties to comply with existing court orders. Where possible, survivors should ask a court to modify or dismiss an existing custody or visitation order prior to flight if the relocation will make compliance with the court order impossible. If no order exists, a survivor may seek to obtain a protection order that does not include visitation for the perpetrator since the survivor may be unable to comply with the visitation schedule ordered by the court if she relocates with the children. In some cases, it may be possible to seek permission to relocate with the children as part of a court order.

- **Is a protection order against the perpetrator likely to be effective?**

If a survivor believes that the perpetrator would comply with a protection order and cease the violence, the order could be very helpful. In addition to deterring future violence, in most states, the court may award temporary custody to the survivor, establish a child support payment plan, and require ancillary relief, such as the relinquishment of firearms, to protect the survivor. Studies have found protection orders to be a useful deterrent to violence in many cases.⁹ In other cases, a perpetrator may view the filing of a protection order as a survivor's attempt to separate, ending the perpetrator's ability to control the survivor. Such perpetrators may commit "separation violence," making this time period very dangerous for survivors.¹⁰

- **Is a protection order likely to be helpful in proving a history of violence in the future?**

If the issuing court understands domestic violence, a protection order could be very helpful to the survivor if she needs to document the history of abuse. For example, if she is charged with parental kidnapping when she flees across state lines, the existence of a protection order from the original state can help prove that she fled to escape abuse, rather than to abscond with the children. A protection order that includes findings of abuse also may be helpful in states where courts must consider domestic violence in making jurisdictional decisions or custody determinations.

- **Do the states have different custody laws related to domestic violence?**

Custody laws vary, and one state may consider domestic violence to a greater degree in custody decisions. This legal standard could be important for a survivor to know prior to flight.

⁸ See Janet M. Bowermaster, *Relocation Custody Disputes Involving Domestic Violence*, 46 Kan. L. Rev. 433 (1998).

⁹ See Logan T. K. Logan and Robert Walker, *Civil protective order effectiveness: Justice or just a piece of paper?*, 25 Violence and Victims 332 (2010).

¹⁰ See Kathryn J. Spearman, Jennifer L. Hardesty, Jacquelyn Campbell, *Post-separation abuse: A concept analysis*, 79(4) J. Adv. Nurs. 1225 (2023).

- **Do the states have different laws protecting the confidentiality of information about domestic violence survivors?**

If a domestic violence survivor needs to have identifying information (such as her address or telephone number) kept confidential for safety reasons, she should be aware of what the different states' laws require with respect to confidentiality.

- **Do the states have different forms of economic support available to survivors?**

Survivors may wish to consider whether one state provides greater access to economic support than another. For instance, one state may have transitional housing programs for survivors, more generous public assistance eligibility rules, or better insurance or employment laws with respect to domestic violence. In addition, economic relief within protection orders or other court orders may be easier to obtain in one state.

Is legal assistance more accessible in a particular state?

Survivors may need to know whether pro bono or sliding scale legal representation is more available or more effective in a particular state, since they are likely to need assistance with a range of legal cases. Similarly, legal services organizations or domestic violence programs may have more generous eligibility standards in certain states.

May a court in the new state issue a custody order?

First, it is important for survivors to call the family court in the previous state regularly (about once a week) to be sure that the abuser has not filed for custody there. If the abuser files for custody in the state that the survivor has left, it is important for the survivor to find an attorney in that state and participate in the court proceedings in person or remotely, where permitted.

The new state is limited in its ability to enter a custody order. Generally, it takes six months for a state to become a child's "home state" with the power to enter a custody order (assuming that nothing has been filed in the original state). However, if there has been child abuse or domestic violence, the new state may be able to enter a temporary emergency custody order right away.

If a judge enters an emergency order, he or she then must contact the judge in the original state. The fact that a court has entered an emergency order will not take jurisdiction away from the state that has the power to hear the long-term custody case, although the original state may choose to relinquish jurisdiction, based on a finding that the refuge state is a more appropriate forum under the UCCJEA's inconvenient forum provision.

When can a court modify a custody or visitation order issued by a court in another state?

The PKPA gives continuing jurisdiction to the state that issued an initial custody determination consistent with the PKPA. The issuing state retains jurisdiction as long as it has jurisdiction under state law and at least one parent or the child continues to live there. A court may modify a custody or visitation order from another state only if 1) it has jurisdiction to do so, and 2) the court of the initial state no longer has jurisdiction or has declined to exercise it.

Similarly, under the UCCJEA, the concept of “exclusive, continuing jurisdiction” limits the ability of a new state to modify a valid existing custody order or to enter a new one governing the same parties and child if there is an existing order.¹¹

The new state court may modify the existing order only if:

1. The court in the original decree state found that no one has a significant connection with the state and that there is no longer substantial evidence in the state; or
2. The new court determines that the child, the parents, and any person acting as a parent do not presently reside in the original decree state; or
3. The original court declines to exercise modification jurisdiction on inconvenient forum grounds; or
4. The new court determines that it has temporary emergency jurisdiction (requires judicial communication with the issuing court to determine next steps).

What steps should a survivor take to enforce a custody order across state lines?

If an abuser takes the children to another state or withholds them in violation of a custody order, survivors (ideally represented by a knowledgeable attorney) may take several steps to enforce the order and recover the children, including:

1. Seeking immediate enforcement by law enforcement by providing a copy of the court order that has been violated. Depending on the state law, law enforcement may be able to act unilaterally based upon the violation of the order.
2. If the order is not an *ex parte* order, seeking a “pick-up” order from the appropriate court in the state where the children are located. The UCCJEA’s enforcement provisions authorize such an order, and if the court finds that the abuser might flee with the children it may issue an *ex parte* pick-up order.
3. Pursue criminal charges for parental kidnapping (sometimes called custodial interference or child concealment) against the abuser. If the potential charge is a felony, it may be possible to work with local law enforcement or prosecutor’s office to enlist the FBI to track down the abuser and return the children. This is through a federal Unlawful Flight To Avoid Prosecution (UFAP) Warrant.¹²

Other tools in this series include case law summaries, a frequently asked questions guide, and guides to other relevant statutes. For copies of these tools or for technical assistance, please visit www.bwjp.org, e-mail ncffc@bwjp.org, or call **800-903-0111**, prompt 2 or **703-312-7922**.

¹¹ UCCJEA Sec. 202.

¹² 18 U.S.C. § 1073.

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